

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3:07cv00052

RANDY L. THOMAS,
Plaintiff,

v.

HELMS MULLISS WICKER PLLC, JAMES
G. MIDDLEBROOKS, and MARK W.
JOHNSON
Defendants.

ORDER

THIS MATTER is before the Court upon Plaintiff's Motion for Default Judgment
(Document #11).

On February 16, 2007, Defendants were served with a duly issued summons and complaint by certified mail, sent by the United States Marshal's Service. The summonses were issued by the clerk and sealed on February 8, 2007. (See Court File Document Nos. 4 – 7). It appears that the plaintiff made two attempts to serve a summons and complaint upon the defendants. The first attempt at service was unavailing because the summons was not signed and sealed by the clerk.

Under Rule 12(a), a defendant shall serve an answer or motion to dismiss "within 20 days after being served with the summons and complaint." Since service was achieved on February 16, 2007 and Defendants timely filed their Motion to Dismiss on March 7, 2007, default judgment is not proper.

Accordingly, Plaintiff's Motion for Default Judgment is DENIED.

Currently, the only matter in this case before the Court is the Defendants' "Motion to Dismiss" (Document #9). The Plaintiff is directed to file a response as described below:

TO THE PLAINTIFF, RANDY L. THOMAS, READ THE FOLLOWING VERY CAREFULLY:

You are to file a brief written argument opposing the Defendant's brief supporting the Motion to Dismiss.

Within fourteen days of the date of entry of this Order, the Plaintiffs must submit the brief or request an extension of the deadline.

You are hereby advised that you have fourteen (14) days from the filing of this Order in which to file your response to the Motion to Dismiss. If you fail to respond to this motion, the court will proceed to decide the matter. A copy of the response must be served on the Defendants and a certificate of service must be filed with the court showing that a copy has been sent to counsel for the Defendants.

IT IS THEREFORE ORDERED that Plaintiff has fourteen (14) days from the filing of this Order in which to respond to Defendants' Motion to Dismiss.

The Clerk is directed to certify copies of this Order to Plaintiff and counsel for Defendants. The Clerk is specifically directed to send Plaintiff's copy by **certified mail, return receipt requested**.

It is so ordered.

Signed: March 13, 2007

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

